

N.D.A.G. Letter to Torkelson (July 22, 1986)

July 22, 1986

Mr. Merle A. Torkelson
McLean County State's Attorney
Box 86
Washburn, ND 58577

Dear Mr. Torkelson:

Thank you for your letter dated May 27, 1986, in which you requested an Attorney General's opinion on the following four questions:

1. Is a mobile home which is situated on land which is also owned by the mobile home owner realty or personalty for property and special assessment purposes; or should all mobile homes be taxed alike and under the provisions of N.D.C.C. Ch. 57-55 regardless of who owns the land?
2. If the correct classification of the mobile home for taxation purposes under these circumstances is realty, does N.D.C.C. Ch. 57-25 provide a method for apportioning and subsequent severance of the taxes between the land and the mobile home?
3. If the property taxes can be apportioned between the land and the mobile home, is it permissible to pay the delinquent taxes on the mobile home, but not on the land, and thereafter remove the mobile home without violating N.D.C.C. §40-01-08?
4. If the taxes can be apportioned, can a special assessment lien also be apportioned and severed from the mobile home? If so, what is the statutory authority for such an apportionment and severance and what effect would that action have on N.D.C.C. §40-01-08?

QUESTION 1

Generally, N.D.C.C. Ch. 57-55 governs taxation of mobile homes. However, an exception exists in N.D.C.C. §57-55-10(2)(c) for cases in which the owner of the mobile home also owns the land upon which the mobile home is located. N.D.C.C. §57-55-10(2)(c) provides that "[t]he provisions of [chapter 57-55] shall not apply to a mobile home which . . . [i]s permanently attached to a foundation and is assessed as real property, provided the owner of such mobile home also owns the land on which such mobile home is located." N.D.C.C. §57-55-10(2)(c). See also North Dakota State Tax Department Property Tax Guidelines, G-25, June 1986 (mobile home situated on land owned by mobile home owner considered real property for taxation purposes).

Thus, if the owner of a mobile home also owns the land upon which the mobile home is located, and the mobile home is permanently attached to a foundation, then the mobile home and the land are realty for property tax and special assessment purposes and are taxed pursuant to N.D.C.C. Ch. 57-02.

QUESTION 2

N.D.C.C. §57-25-01 provides:

57-25-01. APPLICATION FOR DIVISION OF PROPERTY FOR REDEMPTION. In case a mortgage, lien, or sheriff's certificate, of any other instrument conveying an interest in property, affects only a part of the real estate taxed as a unit, any person interested therein may petition the county auditor that he be permitted to pay taxes and make redemption from tax sale as to that part only of the real estate in which he is interested. Such petition shall set forth the petitioner's interest in the property. It shall be verified and may be in the form of an affidavit. Immediately upon the receipt of such petition the county auditor shall consider the same and shall make a fair and equitable valuation of the whole tract. He shall apportion to the petitioner a part of the taxes, interest, and penalty to be paid by him in order to effect redemption, which shall bear to the taxes, interest, and penalty accrued on the whole tract the ratio which the value of the part or parcel of land in which he claims an interest bears to the value of the entire assessed tract of land. Thereupon the county auditor, by registered or certified mail, shall notify all persons interested in such real property according to the record, either as owner or as the holder of a mortgage or other lien or sheriff's certificate, of the filing of such petition and of his assessment of such tract or parcel of land and of his apportionment of the taxes thereon, and the date when the same will be considered and heard by him. Such hearing shall not be less than ten days after the mailing of such notice. Upon the date set, the county auditor shall hear the parties interested and shall assess such tract and apportion the taxes thereon as he shall deem fair and equitable. (Emphasis supplied.)

The emphasized language indicates a legislative intent that N.D.C.C. §57-25-01 applies to the divisions of land only and does not apply to divisions of the land from things permanently affixed to the land. This interpretation of N.D.C.C. §57-25-01 is supported by N.D.C.C. §40-01-08. N.D.C.C. §40-01-08 provides:

40-01-08. REMOVAL OF BUILDING WHEN TAXES AND SPECIAL ASSESSMENTS OR SHARE OF BONDED INDEBTEDNESS ARE DUE -- LIEN -- PENALTY. No person shall remove a building from any lot or tract of land in any municipality, unless it is assessed as personalty or exempt from taxation, until after the taxes and special assessments then due have been paid, nor until the owner shall have paid into the sinking fund for the retirement of any bonded indebtedness of the municipality an amount equal

to the just share of the tax which would then be required against the property in said municipality to pay the principal outstanding, less amount in sinking funds, of the bonded indebtedness of such municipality. If the building is removed without the payment of the taxes and special assessments and pro rata share of bonded indebtedness, such taxes, special assessments, and pro rata share of bonded indebtedness shall be a lien on the building notwithstanding its removal as well as upon the lot, lots, tract, or tracts of land from which the same was removed. This section shall not apply where a building is removed to permit the erection or installation of improvements equal or greater in value than the building removed. Any person violating the provisions of this section is guilty of a class A misdemeanor.

The manifest purpose of N.D.C.C. §40-01-08 is to insure that general property taxes and special assessments upon a lot or tract of land are paid before one is permitted to remove a building from the lot or tract. If N.D.C.C. §57-25-01 were interpreted to enable a taxpayer to sever the land from the building situated on the land, then N.D.C.C. §§57-25-01 and 40-01-08 would conflict as N.D.C.C. §40-01-08 prohibits persons from removing a building from the land upon which it is situated "until after the taxes and special assessments then due have been paid." "In construing statutes, that construction is preferred which minimizes conflicts between statutes." Boettner v. Twin City Constr. Co., 214 N.W.2d 635, 636 (N.D. 1974). See also Hospital Servs. Inc. v. Brackey, 283 N.W.2d 174, 177 (N.D. 1979) (if statutes are pari materia, every effort should be made to give effect to each); Kosmatka v. Safety Responsibility Div., 196 N.W.2d 402, 403 (N.D. 1972) (When two statutes relating to same subject matter conflict, statutes should be construed to give effect to both if it can be done "without doing violence to either.")

N.D.C.C. §§57-25-01 and 40-01-08 address the same subject matter, i.e., the payment of general property taxes and special assessments, and must therefore be harmonized if possible. Consequently, N.D.C.C. Ch. 57-25 does not provide a method for apportioning and severing general property taxes or special assessments between the land and mobile home.

QUESTIONS 3 & 4

Questions 3 and 4 become moot in view of my answers to questions 1 and 2.

Sincerely,

Nicholas J. Spaeth

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